IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Application No.1077 of 2007
in
Appeal from Order No.535 of 2007.

M/s.Shraddha Enterprises ..Appellant

versus

Municipal Corporation of Gr.Mumbai
& Others ..Respondents

Mr.Anil Singh i/b/ D.R.Shah for the Appellant

Mrs. Joglekar for Respondent No.1 B.M.C.

Mr.A.M.Saraogi for Respondent Nos.2, 3, 5 to 9.

Coram : S.R.Sathe, J.
Dated : 4th Oct., 2007

P.C.

1. Heard both the learned Advocates.

2. The Respondent Nos.1 to 3 and 5 to 9 have filed this application for taking appropriate action against all such respondent persons of the appellant for having made false statement before the Court as regards Architect appointed vide Order dated 5.9.2007, namely M/s. Patwardhan & Associates having failed to give necessary notice to the appellant before visiting the premises in question and neglected to file affidavit.

3. From the perusal of the record it is very

clear that though specific direction was given to M/s. Patwardhan and Associates to give necessary notice to all the parties to the proceeding regarding the date and time of inspection work to be carried out, such notice was not given and served to all the parties including the concerned Ward Officer of BMC, and commission work was carried out. Having noticed this, with a view to give opportunity to the Commissioner to explain the position, the Commissioner was directed to file affidavit stating the details. However, the Commissioner failed to file affidavit and also did not give any satisfactory explanation. It is needless to say that such direction for service of notice to all the parties is always given with a view that whatever work is to be carried out with regard to inspection should be in the presence of all the parties and there should not be any room for making grievance. So, under such circumstances, if for one reason or the other the Court Commissioner was not in a position to serve any of the parties then as a prudent person the Court Commissioner could have sought necessary further directions from the Court. But that was not done and hence this Court was constrained to appoint the other Commissioner.

There is no question of either party misleading the Court.

4. So, under such circumstances, new Commissioner has been appointed. Shri Sarogi, learned Advocate for the Respondent Nos.2, 3, 5 to 9 submitted that they have already paid the fees to the first Commissioner. At this stage, Shri Anil Singh, learned Advocate for the Appellant fairly submitted that the appellants are even ready to bear the expenses of the second Commissioner. In view of this, the present application is disposed of as no further orders are necessary.

5. The second Court Commissioner is hereby directed to take all necessary steps as per the Order of this Court dated 27.9.2007 and carry out the work as per the said order.

6. The Appellant has undertaken to forward the copy of this order to the second Commissioner. Besides this, the Office is also directed to send the copy of this Order to the second Commissioner.

7. All the parties are directed to render the

necessary co-operation to the Court Commissioner so as to enable him to complete the commission work.

8. The Court Commissioner to submit his report on 15.10.2007.

9. All the parties to act on the authenticated copy of this order.

(S.R.Sathe, J.)